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3 RONAN TEACHERS' PROGRESSIVE CAUCUS,
4 AFFILIATE OF MONTANA FEDERATION OF
TEACHERS, AFT, AFL-CIO,

ULP 34-1978

Complainant,

-vs-

FINAL ORDER

6
7 RONAN-PABLO UNIT, MONTANA EDUCATION
8 ASSOCIATION, AFFILIATE OF NATIONAL
EDUCATION ASSOCIATION AND MONTANA
EDUCATION ASSOCIATION,

Defendants.

10 The above-captioned matter came on for hearing April 7, 1979,
11 in the library of Ronan High School, Ronan, Montana. The hearing
12 was conducted under the authority and in accordance with 39-31-406,
13 MCA and the Montana Administrative Procedures Act, 2-4-101, et.
14 seq., MCA.

15 On August 9, 1979, the hearing examiner in this matter issued
16 a Findings of Fact, Conclusions of Law and Recommended Order. On
17 August 22, 1979, Exceptions were filed by Defendant Ronan-Pablo
18 Unit of the Montana Education Association. On September 18, 1979,
19 oral arguments were presented before the Board of Personnel Appeals.
20 On October 29, 1979, an Interim Order was issued by the Board
21 remanding the matter back to the hearing examiner for clarification
22 and editing. On January 10, 1980, the Board received a letter from
23 the hearing examiner amending certain findings. That letter was
24 sent to the parties. On March 19, 1980, the Board received renewed
25 exceptions to the Recommended Order from the Defendant. On April
26 23, 1980, an oral argument was presented to the Board on the
27 renewed exceptions. In view of the oral arguments, and the review
28 done by the hearing examiner in this matter, the hearing examiner's
29 Recommended Order is amended and the Final Order of the Board is
30 as follows: (Additions to the hearing examiner's Recommended
31 Order are noted by underlining)
32

2 The Ronan-Pablo Unit of the Montana Education Association,
3 the recognized bargaining agent for the unit, (hereinafter referred
4 to as RPU) negotiated a contract with School District 30 which
5 contained an agency shop provision. Those teachers not wishing to
6 become members of the MEA were required, under the contract, to
7 pay a "representation service fee". This provision was the source
8 of much disagreement within the unit.

9 Several of the teachers in the unit did then, and do now,
10 belong to the American Federation of Teachers (AFT) (hereinafter
11 referred to as AFT members). Early in the fall of 1978 those
12 teachers belonging to the AFT decided to become members of MEA in
13 order to "bring about change from within". The major change they
14 were concerned to bring about appeared to be reopening negotiations
15 of the agency shop provision with an eye to eliminating it. This
16 intention was communicated to the MEA membership.

17 Subsequent to that decision events followed which gave rise
18 to the filing of unfair labor practice charges herein.

19 FINDINGS OF FACT

20 1. The Montana Education Association is the recognized
21 bargaining agent for teachers at the Ronan-Pablo Unit in School
22 District 30, Ronan, Montana.

23 2. The American Federation of Teachers (AFT) is a rival
24 union which several teachers in the Ronan-Pablo Unit (RPU) have
25 joined.

26 3. The Master Contract between the Ronan-Pablo Unit, Montana
27 Education Association and School District No. 30 contains an
28 agency shop provision and requires the payment of a representation
29 service fee by non-members of MEA. (See Joint Exhibit 1, Section
30 4.04.)

31 4. James Gillhouse is President of RPU.

32 5. James Clairmont is President of the AFT members.

2 members decided to become members of MEA in order to attempt to
3 bring about changes in the MEA from within. The purpose was
4 communicated to the MEA membership.

5 7. An RPU meeting was held in Roman on November 14, 1978.
6 Prior to and subsequent to that meeting, several AFT members
7 submitted membership cards. Those teachers attended the RPU
8 meeting voted and were generally recognized as members.

9 8. There is some evidence indicating that AFT members
10 experienced difficulty in obtaining membership application cards.
11 There was contradictory testimony as to when and exactly how many
12 cards were turned over. It is certain that at least 18 cards were
13 supplied to AFT members by November 3, 1978 (see Affidavit of
14 James Gillhouse attached to Defendant's Memorandum). There was no
15 evidence amounting to a preponderance that Mr. Gillhouse intentionally
16 withheld cards for an unreasonable period.

17 9. Between November 14, 1978, and February 13, 1979, no
18 general MEA meetings were held by RPU. However, there was also no
19 evidence that this was substantially irregular. Some teachers
20 testified that they heard Mr. Gillhouse announce a meeting for
21 December 12, 1978, right after the November 14, 1978, meeting.
22 That meeting never took place, although several AFT members appeared
23 on that date and voted to change the MEA officers. A later attempt
24 to change the November minutes to reflect this announcement failed
25 for lack of majority. Also, it appears to be past practice for
26 notices to go out prior to each meeting, and no notice was given
27 in December.

28 10. Two Executive Committee meetings were held between the
29 above-mentioned dates. Upon request, an AFT member was later
30 allowed to submit a written request for a copy of them. Although
31 there was testimony that members could volunteer to be on Committees
32 within RPU, it appeared that in fact they are appointed to committees by President Gillhouse.

14. 1978, and mid-February, 1979. Appointments to a committee to revise the constitution were started in November and continued into January. No APT members were appointed to this committee until January 24, 1979, at which time Ron Bond was appointed. This date was after HPU was notified of the unfair labor practice charges against them. There was testimony by one member of the Executive Committee, Lonnie Smith, that "it was felt" that since Mr. Bond has paid some dues by then, he was "serious" about becoming an MEA member.

12. The Nominating Committee was appointed by the Executive Committee in February. No APT members were appointed because they had had their MEA membership revoked as of that time.

13. A copy of the MEA Constitution was supplied to APT members on January 24, 1979.

14. Prior to the end of January, 1979, the policy of MEA as to members paying dues on a cash basis was that one-half of the dues were to be paid by February 1, and the other half by April 1. Different arrangements could be made upon request.

15. On January 27-28, 1979, the Executive Board of MEA met and changed the dues payment policy to require all cash-paying members to pay dues within 30 days following application for membership. (See Complainant's Exhibit 4A.)

16. In a letter dated January 30, 1979 (Defendant's Exhibit 11), Mr. Gillhouse, in response to an inquiry from Mr. Clairmont, informed Mr. Clairmont that he and others would be required to pay one-half of their dues by February 1, 1979.

17. Most APT members decided not to pay their dues as of February 1, 1979. As of that date, however, no memberships were revoked.

18. In a letter dated February 5, 1979 (Complainant's Exhibit 3), Mr. Clairmont requested clarification of the policy from Mr. Randels, then Interim Executive Secretary of MEA.

2 members, was written by Mr. Randels informing members who had not
3 paid their dues as of February 1, 1979, that they had thirty days
4 to do so. (Complainant's Exhibit 4B).

5 20. Two letters to Mr. Clairmont issued from Mr. Randel's
6 office on February 8, 1979. One (Complainant's Exhibit 4A) gave
7 Mr. Clairmont and others 30 days to comply with the policy.
8 Another (Complainant's Exhibit 5) revoked Mr. Clairmont's membership
9 for nonpayment of dues, effective immediately.

10 21. Mr. Larry Diebold, Executive Secretary of MEA at the
11 time of the hearing but not at the time the letters were sent out,
12 testified that he had the impression that the rationale for the
13 conflicting letters referred to in paragraphs 15 and 20 above was
14 that the blank letters were designated for members who had paid
15 dues before but were merely delinquent. On the other hand, members
16 who had never paid were terminated immediately. There was no
17 evidence to show that any members other than AFT members had their
18 membership revoked immediately.

19 22. Mr. Gillhouse was requested to phone the Helena MEA
20 office to seek an explanation of the membership status of the AFT
21 members. He refused to do so, indicated he had spoken with that
22 office already and was satisfied that their memberships had been
23 revoked.

24 23. On February 13, 1979, a general MEA meeting was held in
25 Ronan. The minutes of the meeting state:

26
27 (I) If the non-members vote it will have to be recorded separately
28 and if indeed, it is determined at a later date they are members,
29 their votes will be counted . . . Lonnie Smith moved that we
continue the meeting and separate the votes. Ron Krantz seconded.
Motion carried. (Defendant's Exhibit #14)

30
31 In spite of these minutes an affidavit submitted by Defendant signed
32 by President Gillhouse and not contradicted by Complainant shows that
in fact two lists were not maintained in the votes taken during

2 were not maintained during the voting procedure at the February 13,
3 1979, meeting.

4 DISCUSSION

5 There appear to be six charges contained in the More Specific
6 Statement of Charges and the Amendment of Complaint. Each charge
7 will be stated in Complainant's language and discussed separately
8 here. For simplicity, they will be numbered 1-6 and referred to as
9 such hereafter. (Defendants are alleged to have violated 39-31-402,
10 MCA and 39-31-205, MCA in Counts 1-4).

11 1. That on or about November 29, 1978, James
12 Gillhouse, President of the Ronan-Pablo Unit of the
13 Montana Education Association, refused to provide Com-
14 plainant with a copy of the Constitution and by-law of
15 Defendant union because Complainants had formally exercised
16 their rights guaranteed under the Act to join and assist a
17 rival labor organization.

18 Complainants were supplied with copies of the documents they
19 requested on January 24, 1979. Although this did not occur until
20 after the Defendants learned of the filing of unfair labor practice
21 charges, there is no further remedy this Board could order with
22 respect to this charge. This issue is therefore moot.

23 2. That Complainant members of the Ronan Pablo-Unit
24 of the Montana Education Association have purposely ex-
25 cluded from participating in union activities including
26 participation on important union committee because said
27 members had exercised their right to join and assist a rival
28 labor organization.

29 Between November 14, 1978, and late February, it appears that
30 appointments were made to only two committees. Mr. Gillhouse
31 testified that he began making appointments to the Constitutional
32 Committee in late November. No AFT-MEA members were appointed to
that committee until January 24, 1979, after the unfair labor
practice charges had been filed against the defendant union. On
that date, Ron Bond, an AFT-MEA member was appointed. He apparently
was the only AFT-MEA member who had paid dues then, although they
were not due until February 2, 1979.

During February, appointments were made to a Nominating
Committee. No AFT-MEA members were appointed because they had had

2 improperly revoked (see paragraph 5 of this Discussion), those
3 members were not eligible to be appointed to that committee.
4 Although there was no obligation on the part of President Gillhouse
5 to appoint these people to the committee the fact that they could not
6 even have been considered for appointment excluded them from
7 participating in union activities.

8 3. That Defendant had conducted all union business
9 in secret excluding Complainants from meetings or purposely
10 cancelling meetings to preclude Complainants' members from
11 participating in union affairs because Complainants had
12 joined and assisted a rival labor organization.

13 No general MEA meetings were held between November 14, 1978,
14 and December 13, 1978. However, there was no evidence presented
15 indicating that this substantially deviated from past practice.
16 Although some AFT members testified that they heard Mr. Gillhouse
17 announce a December 12th meeting at the November 14th meeting, a
18 majority of the members could not substantiate this. Additionally
19 there is evidence that it is regular practice for teachers to be
20 given notice just before a meeting, and none was given in December.

21 Two Executive Committee meetings were held between November
22 14, 1979 and February 14, 1979. Members of AFT who wished to see
23 the minutes of these were allowed to see them, but had to submit a
24 written request for a copy of them.

25 Although the requirement of a written request for minutes
26 appears harsh, none of the above sustains the charge that business
27 was conducted in secret.

28 4. That Complainants were purposely discouraged from
29 joining the Defendant union because Complainant had assisted
30 and joined a rival union. When Complainant sought membership
31 cards in order to comply with the agency shop provision of
32 the pertinent collective bargaining agreement, Defendant
33 feigned inability to provide such cards which were finally
34 provided only after considerable effort on the part of
35 Complainants, and some employees are still not being provided
36 with membership cards."

37 Although there was some evidence that AFT members had difficulty
38 in obtaining membership applications, none amounted to a prepond-

2 for an unreasonable period.

3 5. That on or about 9 February, 1979, Mr. James R.
4 Clairmont, a member of the Ronan Teachers' Progressive
5 Caucus received communications from Mr. Raymond L. Randels,
6 Interim Executive Secretary of the Montana Education Associ-
7 ation. In a letter dated 9 February, 1979, Mr. Randels
8 informed Mr. Clairmont that, according to a new policy
9 adopted by the Board of Directors of the Montana Education
10 Association, dues payments to the MEA should be made 30 days
11 following application for membership and that failure to
12 do so constitutes grounds for revocation of membership. The
13 letter further stated that '... We are advising all persons
14 who have not paid their 1978-79 dues that they have thirty
15 days to comply with the policy' and that "this policy is
16 being uniformly applied throughout the state."

17 In a letter dated the very same day, 9 February,
18 1979, Mr. Randels notified Mr. Clairmont that his membership
19 was terminated effective immediately. Such an action on the
20 part of the Defendant is undeniable evidence that the Defend-
21 ant is willfully engaging in a course of conduct to discrimi-
22 nate against employees within a bargaining unit because said
23 employees have attempted to exercise rights guaranteed by
24 39-31-201, MCA. Such conduct is clearly violative of 39-31-402(1),
25 MCA and 39-31-305(2), MCA. Moreover, although it is not speci-
26 fically prohibited in Montana law as it is in the NLRA,
27 employees of the bargaining unit in question are being
28 discriminated against by their union for filing a complaint
29 before the Board of Personnel Appeals. [R.C.M. citations
30 in the original changed to MCA citations.]

31 As of February 1, 1979, there appeared to be some confusion
32 on part of AFT members as to the dues payment policy. This con-
33 fusion was not justified. They had been informed that the policy
34 was that they would have to pay one half of their dues by February
35 1, 1979; however, no memberships were revoked. On February 5,
36 1979, Mr. Clairmont sent a letter (Complainant's Exhibit 3) request-
37 ing clarification of the policy to Mr. Randels in the state MEA
38 office. There had been a state MEA meeting in the latter part of
39 January at which the policy had changed.

40 A number of letters were issued from the state office both in
41 response to Mr. Clairmont's letter and in general (see findings of
42 fact 20 and 21). Mr. Clairmont received two of these letters in
43 one day. One of them gave him 30 days to pay his dues. The other
44 revoked his membership immediately. Additionally, a blank letter,
45 apparently for MEA members in general purported to give them 30
46 days in which to pay their dues if they were delinquent on February
47 1, 1979.

2 Clairmont. At worst, and in fact, there seems to have been two
3 policies: one policy applied to MEA members in general the other
4 applied to AFT members.

5 The union (RPU-MEA) has a fiduciary duty to inform an employee
6 of a delinquency and a pending membership revocation.
7 This was not done. Also, Mr. Gillhouse, as President of RPU, had
8 an obligation to inquire on behalf of his members as to the correct
9 policy and to help them in their efforts to remain members. As
10 such, he should have contacted the state MEA office when requested
11 at the February 13, 1979, meeting, as opposed to accepting one
12 version of the policy put forth by that office. (See: Teamsters,
13 Local 122 (Bush & Co. of Mass.) 203 NLRB 1235 (1973), enf. 589
14 F.2d 1160, 87 LRM 3274 (CAL, 1974). Additionally, the dues obli-
15 gation must be enforced uniformly. (see: Hospital & Nursing Home
16 Employees, Local 113 (Mounds Park Hospital, 228 NLRB No. 197, 95
17 LRM 1422, enf. 567 F.2d 831, 97 LRM 2160 CAS, 1977); Local 9 Sugar
18 Workers ILA (American Sugar Co.), 146 NLRB No. 14, 55 LRM 1261
19 (1954).), and it was obviously not in this case.

20 6. That on or about 13 February 1979, at a regular
21 meeting of the Ronan-Pablo Unit of the Montana Education
22 Association, the Defendant established by a motion passed
23 out of order over the objection of the Complainant, that
24 two separate unions would be formed within the bargaining
25 unit represented by the Ronan-Pablo Unit of the Montana
26 Education Association -- one union of dues paying members
27 and the role of the non-dues paying members was left
28 unclear. Beyond the puzzling aspect of this action, the
29 Defendant is discriminating against employees within
the collective bargaining unit solely for the reason that
said employees have sought in the past and continued to
exercise rights guaranteed by Section 59-1605(1) of the
Act. [This is obviously a clerical error. The section
cited prohibits conduct by a public employer. The
Complainant obviously was referring to Section 59-1605(2)
which is not 39-31-402(1), MCA and which prohibits conduct
by a labor organization.]

30 In view of finding of fact number 23 the charge is denied.
31 Although there was a motion passed to segregate votes, the minutes
32 show that such segregation did not actually take place.

The Defendants have committed unfair labor practices as prohibited in 39-31-402(1), MCA in counts 2 and 5. Count 1 is dismissed as moot. The remainder of the charges are denied as unsupported by the evidence.

ORDER

1. Defendants Ronan-Pablo Unit of the Montana Education Association and the Montana Education Association shall cease and desist from interfering with employees of Lake County District #30 in the exercise of rights guaranteed by section 39-31-201 MCA.

2. Defendant Ronan-Pablo Unit of the Montana Education Association shall take the following affirmative actions:

- a. Immediately reinstate Complainant members to the Ronan-Pablo Unit of the Montana Education Association and allow them thirty days in which to pay the pro rata share of the current year's dues figured from the date of reinstatement to August 31, 1980.
- b. Permit said members the same membership rights as other members within the Ronan-Pablo Unit of the Montana Education Association and its affiliates.
- c. Post for 30 calendar days this Order in conspicuous places and wherever the union is permitted by contract to post union business.
- d. Complete the attached certificate of posting.

Dated this 22nd day of August, 1980.

BOARD OF PERSONNEL APPEALS

BY: Brent Cromley
Brent Cromley, Chairman

CERTIFICATE OF MAILING

I, Janet Jackson, hereby certify and state that on the 25th day of August, 1980 a true and correct copy of the above captioned ULP 34-1978 FINAL ORDER was mailed to the following:

Emilie Loring
Hilley & Loring, PC
1731 Tenth Avenue South
Great Falls, MT 59405

Cordell R. Brown, Representative
Montana Federation of Teacher, AFL-CIO
P.O. Box 1246
Helena, MT 59601

Janet Jackson

Prior4:5

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

RONAN TEACHERS' PROGRESSIVE CAUCUS,
AFFILIATE OF MONTANA FEDERATION OF
TEACHERS, AFT, AFL-CIO

WLP 34-1978

Complainant,

VS.

RONAN-PABLO UNIT, MONTANA EDUCATION
ASSOCIATION, AFFILIATE OF NATIONAL
EDUCATION ASSOCIATION AND MONTANA
EDUCATION ASSOCIATION,

Defendants.

CERTIFICATE OF POSTING

I, _____, do certify that I did post
in conspicuous places and wherever the union is permitted by
contract to post union business, a copy of the Order of WLP 34-1978,
and will keep those copies posted for a period of 30 calendar
days.

Dated this _____ day of _____, 1980.

President
Ronan-Pablo Unit of the Montana
Education Association

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

RONAN TEACHERS' PROGRESSIVE CAUCUS,
AFFILIATE OF MONTANA FEDERATION OF
TEACHERS, AFT, AFL-CIO,

Complainant,

-vs-

RONAN-PABLO UNIT, MONTANA EDUCATION
ASSOCIATION, AFFILIATE OF NATIONAL
EDUCATION ASSOCIATION AND MONTANA
EDUCATION ASSOCIATION,

Defendants.

ULF 34-1978

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND
RECOMMENDED ORDER

The above-captioned matter came on for hearing April 7, 1979, in the library of Ronan High School, Ronan, Montana. The hearing was conducted under the authority and in accordance with 39-31-406, MCA and the Montana Administrative Procedures Act, 2-4-101, et. seq., MCA.

Complainants were represented by Cordell R. Brown, Representative, Montana Federation of Teachers, AFL-CIO, P.O. Box 1246, Helena, Montana, 59601. Defendants were represented by Emilie Loring, Hilley & Loring, P.C., 1713 Tenth Avenue South, Great Falls, Montana, 59405. Post-hearing briefs were ordered and submitted.

INTRODUCTION

The Ronan-Pablo Unit of the Montana Education Association, the recognized bargaining agent for the unit, (hereinafter referred to as RPU) negotiated a contract with School District 30 which contained an agency shop provision. Those teachers not wishing to become members of the MEA were required, under the contract, to pay a "representation service fee". This provision was the source of much disagreement within the unit.

Several of the teachers in the unit did then, and do now, belong to the American Federation of Teachers (AFT) (hereinafter referred to as AFT members). Early in the fall of 1979 those teachers belonging to the AFT decided to become members of MEA in

1 order to "bring about change from within". The major change they
2 were concerned to bring about appeared to be reopening negotia-
3 tions of the agency shop provision with an eye to eliminating it.
4 This intention was communicated to the MEA membership.

5 Subsequent to that decision events followed which gave rise
6 to the filing of unfair labor practice charges herein. After
7 carefully listening to the testimony and considering all evidence
8 and briefs presented by both parties, I make the following findings
9 of fact.

10 FINDINGS OF FACT

11 1. The Montana Education Association is the certified
12 bargaining agent for teachers at the Ronan-Pablo Unit in School
13 District 30, Ronan, Montana.

14 2. The American Federation of Teachers (AFT) is a rival
15 union representing several teachers in the Ronan-Pablo Unit (RPU).

16 3. The Master Contract between the Ronan-Pablo Unit,
17 Montana Education Association and School District No. 30 contains
18 an agency shop provision and requires the payment of a representa-
19 tion service fee by non-members of MEA. (See Joint Exhibit 1,
20 Section 4.04.)

21 4. James Gillhouse is President of RPU.

22 5. James Clairmont is President of the AFT members.

23 6. At an AFT meeting in late October or early November,
24 AFT members decided to become members of MEA in order to attempt
25 to bring about changes in the MEA from within. The purpose was
26 communicated to the MEA membership.

27 7. An RPU meeting was held in Ronan on November 14, 1978.
28 Prior to and subsequent to that meeting, several AFT members
29 submitted membership cards. Those teachers attended the RPU
30 meeting voted and were generally recognized as members.

31 8. There is some evidence indicating that AFT members
32 experienced difficulty in obtaining membership application cards.
There was contradictory testimony as to when and exactly how

1 many cards were turned over. It is certain that at least 18
2 cards were supplied to AFT members by November 3, 1978 (see
3 Affidavit of James Gillhouse attached to Defendant's Memorandum).
4 There was no evidence amounting to a preponderance that Mr.
5 Gillhouse intentionally withheld cards for an unreasonable period.

6 9. Between November 14, 1978, and February 13, 1979, no
7 general MEA meetings were held by RPU. However, there was also
8 no evidence that this was substantially irregular. Some teachers
9 testified that they heard Mr. Gillhouse announce a meeting for
10 December 12, 1978, right after the November 14, 1978, meeting.
11 That meeting never took place, although several AFT members
12 appeared on that date and voted to change the MEA officers. A
13 later attempt to change the November minutes to reflect this
14 announcement failed for lack of a majority. Also, it appears to
15 be past practice for notices to go out prior to each meeting, and
16 no notice was given in December.

17 10. Two Executive Committee meetings were held between the
18 above-mentioned dates. Upon request, an AFT member was later
19 allowed to see the minutes of those meetings, although he was
20 required to submit a written request for a copy of them. Although
21 there was testimony that members could volunteer to be on
22 Committees within RPU, it appeared that in fact they are appointed
23 to committees by the Executive Committee.

24 11. Appointments were made to two Committees between November
25 14, 1978, and mid-February, 1979. Appointments to a committee to
26 revise the constitution were started in November and continued
27 into January. No AFT members were appointed to this committee
28 until January 24, 1979, at which time Ron Bond was appointed.
29 This date was after RPU was notified of the unfair labor practice
30 charges against them. There was testimony by one member of the
31 Executive Committee, Lonnie Smith, that "it was felt" that since
32 Mr. Bond had paid some dues by then, he was "serious" about
becoming an MEA member.

1 12. The Nominating Committee was appointed by the Executive
2 Committee in February. No AFT members were appointed because
3 they had had their MEA membership revoked as of that time.

4 13. A copy of the MEA Constitution was supplied to AFT
5 members on January 24, 1979.

6 14. Prior to the end of January, 1979, the policy of MEA as
7 to members paying dues on a cash basis was that one-half of the
8 dues were to be paid by February 1, and the other half by April
9 1. Different arrangements could be made upon request.

10 15. On January 27-28, 1979, the state office of MEA met and
11 changed the dues payment policy to require all cash-paying members
12 to pay dues within 30 days following application for membership.
13 (See Complainant's Exhibit 4A.)

14 16. In a letter dated January 30, 1979 (Defendant's Exhibit
15 11), Mr. Gillhouse, in response to an inquiry from Mr. Clairmont,
16 informed Mr. Clairmont that he and others would be required to
17 pay one-half of their dues by February 1, 1979.

18 17. Most AFT members decided not to pay their dues as of
19 February 1, 1979. As of that date, however, no memberships were
20 revoked.

21 18. In a letter dated February 5, 1979 (Complainant's
22 Exhibit 3), Mr. Clairmont requested clarification of the policy
23 from Mr. Randels, then Interim Executive Secretary of MEA.

24 19. A letter addressed in blank, intended apparently for
25 MEA members, was written by Mr. Randels informing members who had
26 not paid their dues as of February 1, 1979, that they had thirty
27 days to do so. (Complainant's Exhibit 4B).

28 20. Two letters to Mr. Clairmont issued from Mr. Randel's
29 office on February 8, 1979. One (Complaint's Exhibit 4A) gave
30 Mr. Clairmont and others 30 days to comply with the policy.
31 Another (Complainant's Exhibit 5) revoked Mr. Clairmont's member-
32 ship for non-payment of dues, effective immediately.

1 21. Mr. Larry Diebold, Executive Secretary of MEA at the
2 time of the hearing but not at the time the letters were sent
3 out, testified that he had the impression that the rationale for
4 the conflicting letters referred to in paragraphs 15 and 20 above
5 was that the blank letters were designated for members who had
6 paid dues before but were merely delinquent. On the other hand,
7 members who had never paid were terminated immediately. There
8 was no evidence to show that any members other than APT members
9 had their membership revoked immediately.

10 22. On February 13, 1979, a general MEA meeting was held in
11 Ronan. Due to confusion over membership status, votes were
12 separated into two lists. One list included only votes of those
13 members whose status was in question. Mr. Gillhouse was requested
14 to phone the Helena MEA office to seek an explanation of the
15 membership status of the APT members. He refused to do so,
16 indicated he had spoken with that office already and was satisfied
17 that their memberships had been revoked.

18 DISCUSSION

19 There appear to be six charges contained in the More Specific
20 Statement of Charges and the Amendment of Complaint. Each charge
21 will be stated in Complainant's language and discussed separately
22 here. For simplicity, they will be numbered 1-6 and referred to
23 as such hereafter. (Defendant's are alleged to have violated
24 39-31-402, MCA and 39-31-205, MCA in Counts 1-4).

25 1. "That on or about November 29, 1978, James Gillhouse,
26 President of the Ronan-Pablo Unit of the Montana Education
27 Association, refused to provide Complainant with a copy of the
28 Constitution and by-law of Defendant union because Complainants
had formally exercised their rights guaranteed under the Act to
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30 requested on January 24, 1979. Although this did not occur until
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32 practice charges, there is no further remedy this Board could
order with respect to this charge. This issue is therefore moot.

1 2. "That Complainant members of the Ronan Pablo-Unit of
2 the Montana Education Association have purposely excluded from
3 participating in union activities including participation on
4 important union committee because said members had exercised
5 their right to join and assist a rival labor organization."

6 Between November 14, 1978, and late February, it appears
7 that appointments were made to only two committees. Mr. Gilhouse
8 testified that the Executive Committee began making appointments
9 to the Constitutional Committee in late November. No AFT members
10 were appointed to that committee until January 24, 1979, after
11 the unfair labor practice charges had been filed against the
12 defendant union. On that date, Ron Bond, an AFT member was
13 appointed. He apparently was the only AFT member who had paid
14 dues then, although they were not due until February 1, 1979.
15 Because other AFT members who had joined the MEA but had not yet
16 paid their dues were at that time bona fide members, they should
17 have been appointed to the Committee on an equal basis.

18 During February, appointments were made to a Nominating
19 Committee. No AFT members were appointed because they had had
20 their memberships revoked by then. Because the memberships had
21 been improperly revoked (see paragraph 5 of this Discussion),
22 those AFT members should have been appointed to that committee on
23 an equal basis.

24 3. "That Defendant had conducted all union business in
25 secret excluding Complainants from meetings or purposely cancel-
26 ling meetings to preclude Complainant's members from participating
27 in union affairs because Complainants had joined and assisted a
28 rival labor organization."

29 No general MEA meetings were held between November 14, 1978,
30 and December 13, 1978. However, there was no evidence presented
31 indicating that this substantially deviated from past practice.
32 Although some AFT members testified that they heard Mr. Gilhouse
33 announce a December 12th meeting at the November 14th meeting, a
34 majority of the members could not substantiate this. Additionally,
35 there is evidence that it is regular practice for teachers to be
36 given notice just before a meeting, and none was given in December.

Two Executive Committee meetings were held between November 14,

1 1979, and February 13, 1979. Members of AFT who wished to see
2 the minutes of these were allowed to see them, but had to submit
3 a written request for a copy of them.

4 Although the requirement of a written request for minutes
5 appears harsh, none of the above sustains the charge that business
6 was conducted in secret.

7 4. "That Complainants were purposely discouraged from
8 joining the Defendant union because Complainant had assisted and
9 joined a rival union. When Complainant sought membership cards
10 in order to comply with the agency shop provision of the pertinent
11 collective bargaining agreement, Defendant feigned inability to
12 provide such cards which were finally provided only after consid-
13 erable effort on the part of Complainants, and some employees are
14 still not being provided with membership cards."

15 Although there was some evidence that AFT members had
16 difficulty in obtaining membership applications, none amounted to
17 a preponderance showing Mr. Gillhouse intentionally withheld
18 these cards for an unreasonable period.

19 5. "That on or about 9 February, 1979, Mr. James R.
20 Clairmont, a member of the Roman Teachers' Progressive Caucus
21 received communications from Mr. Raymond L. Randels, Interim
22 Executive Secretary of the Montana Education Association. In a
23 letter dated 9 February, 1979, Mr. Randels informed Mr. Clairmont
24 that, according to a new policy adopted by the Board of Directors
25 of the Montana Education Association, dues payments to the MEA
26 should be made 30 days following application for membership and
27 that failure to do so constitutes grounds for revocation of
28 membership. The letter further stated that '...we are advising
29 all persons who have not paid their 1978-79 dues that they have
30 thirty days to comply with the policy' and that 'this policy is
31 being uniformly applied throughout the state.'"

32 In a letter dated the very same day, 9 February, 1979, Mr.
Randels notified Mr. Clairmont that his membership was terminated
effective immediately. Such an action on the part of the Defen-
dant is undeniable evidence that the Defendant is willfully
engaging in a course of conduct to discriminate against employees
within a bargaining unit because said employees have attempted to
exercise rights guaranteed by 39-31-201, MCA. Such conduct is
clearly violative of 39-31-402(1), MCA and 39-31-305(2), MCA.
Moreover, although it is not specifically prohibited in Montana
law as it is in the NLRA, employees of the bargaining unit in
question are being discriminated against by their union for
filing a complaint before the Board of Personnel Appeals." [R.C.M.
citations in the original changed to MCA citations.]

As of February 1, 1979, there appeared to be some confusion
on part of AFT members as to the dues payment policy. This
confusion was not justified. They had been informed that the
policy was that they would have to pay one half of their dues by

1 February 1, 1979; however, no memberships were revoked. On
2 February 5, 1979, Mr. Clairmont sent a letter (Complainant's
3 Exhibit 3) requesting clarification of the policy to Mr. Randels
4 in the state MEA office. There had been a state MEA meeting in
5 the latter part of January at which the policy had changed.

6 A number of letters were issued from the state office both
7 in response to Mr. Clairmont's letter and in general (see findings
8 of fact 20 and 21). Mr. Clairmont received two of these letters
9 in one day. One of them gave him 30 days to pay his dues. The
10 other revoked his membership immediately. Additionally, a blank
11 letter, apparently for MEA members in general, purported to give
12 them 30 days in which to pay their dues if they were delinquent
13 on February 1, 1979.

14 At best, the policy at that time was unclear as put to Mr.
15 Clairmont. At worst, and in fact, there seems to have been two
16 policies: one policy applied to MEA members in general the other
17 applied to APT members.

18 The union (RPU-MEA) has a fiduciary duty to inform an employee
19 clearly of a delinquency and a pending membership revocation.
20 This was not done. Also, Mr. Gillhouse, as President of RPU, had
21 an obligation to inquire on behalf of his members (APT members)
22 as to the correct policy and to help them in their efforts to
23 remain members. As such, he should have contacted the state MEA
24 office when requested at the February 13, 1979, meeting, as
25 opposed to accepting one version of the policy put forth by that
26 office. (See: Teamsters, Local 122 (Bush & Co. of Mass.) 203 NLRB
27 1235 (1973), enf. 509 F.2d 1160, 87 LRRM 2274 (CAL, 1974).
28 Additionally, the dues obligation must be enforced uniformly.
29 (See: Hospital & Nursing Home Employees, Local 113 (Mounts Park
30 Hospital, 228 NLRB No. 197, 95 LRRM 1422, enf. 567 F.2d 831, 97
31 LRRM 2160 CAA, 1977); Local 9, Sugar Workers ILA (American Sugar
32 Co.), 146 NLRB No. 14, 55 LRRM 1261 (1964).), and it was obviously
not in this case.

1 6. "That on or about 13 February 1979, at a regular meeting
2 of the Ronan-Pablo Unit of the Montana Education Association, the
3 Defendant established by a motion passed out of order over the
4 objection of the Complainant, that two separate unions would be
5 formed within the bargaining unit represented by the Ronan-Pablo
6 Unit of the Montana Education Association -- one union of dues
7 paying members and one union of non-dues paying members. Such a
8 union would be represented by the dues paying members and the
9 role of the non-dues paying members was left unclear. Beyond the
10 puzzling aspect of this action, the Defendant is discriminating
11 against employees within the collective bargaining unit solely for
12 for the reason that said employees have sought in the past and
13 continue to exercise rights guaranteed by Section 59-1605(1) of
14 the Act." [This is obviously a clerical error. The section cited
15 prohibits conduct by a public employer. The Complainant obviously
16 was referring to Section 59-1605(2), which is not 39-31-402(1),
17 MCA and which prohibits conduct by a labor organization.]

18 At the MEA meeting held on February 13, 1979, after some
19 disagreement, two separate lists were maintained for votes. One
20 contained only AFT members votes. The rationale for this was
21 that membership status of the AFT was in question. Only because
22 the membership status was in question unfairly was this an unfair
23 act on the part of the RPU.

24 NOTE: In addition to the commission of unfair labor prac-
25 tice charges (39-31-402(1), MCA), Complainant alleges a violation
26 of the duty of fair representation (39-31-205, MCA) and the duty
27 to bargain collectively (39-31-305(2), MCA). Both of these charges
28 concern a union's duty to the employees in relation to a third
29 party and are, therefore, inappropriate charges for the actions
30 described. Where the actions described above amounted to unfair-
31 ness, they will be found only to be unfair labor practices under
32 39-31-402(1), MCA.

33 CONCLUSION OF LAW

34 The Defendants have committed unfair labor practices as
35 prohibited in 39-31-402(1), MCA in counts 2, 5, and 6. Count 1
36 is dismissed as moot. The remainder of the charges are denied as
37 unsupported by the evidence.

38 RECOMMENDED ORDER

39 1. Defendants Ronan-Pablo Unit and Montana Education
40 Association cease and desist from committing unfair labor
41 practices and refrain from committing them in the future.

1 2. Ronan-Pablo Unit and Montana Education Association
2 reinstate Complainant members and allow them thirty days in which
3 to pay their dues.

4 3. Ronan-Pablo Unit appoint AFT members to Committees on
5 an equal basis with other members.

6 4. Ronan-Pablo Unit consolidate the "separate lists" of
7 votes taken at the February 13, 1979, meeting, and any meetings
8 subsequent to that, into one list.

9 DATED this 9th day of August, 1979.

10 BOARD OF PERSONNEL APPEALS

11
12 BY Janice S. VanRiper
13 Janice S. VanRiper
14 Hearing Examiner

15 NOTICE

16 Written exceptions may be filed to these Findings of Fact,
17 Conclusions of Law, and Recommended Order within twenty days
18 after service thereof. If no exceptions are filed with the Board
19 of Personnel Appeals within that period of time, the Recommended
20 Order shall become the Final Order of the Board of Personnel
21 Appeals. Exceptions shall be addressed to the Board of Personnel
22 Appeals, Capitol Station, Helena, Montana 59601.

23 * * * * *

24 CERTIFICATE OF MAILING

25 I, Jennifer Jacobson, hereby certify and state that on
26 the 10th day of August, 1979, a true and correct copy
of the above captioned VLP 14-1978 FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDED ORDER was mailed to the following:

27 Emilie Loring
28 Hilley & Loring, PC
1731 Tenth Avenue South
Great Falls, MT 59405

29 Cordell R. Brown, Representative
30 Montana Federation of Teachers, AFL-CIO
P.O. Box 1246
31 Helena, MT 59601

32 PRIOR2:a

-10-

cc: Ronan Pablo Unit #30
Janice VanRiper